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July 14, 2014
Ms. Elizabeth Appel
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MS 4141-MIB
Washington, DC 20240

consultation@bia.gov

Re: 1076-AF18

The Choctaw-Apache Community of Ebarb (petitioner #37) welcomes the bulk of the proposed changes to the federal acknowledgment rule. We ask for additional clarification of certain proposed changes.

We agree with proposed changes to eliminate the requirement of external identification from 83.11(a). The proposed rule recognizes that names or identification by outside entities may change over time. It should be clearly stated that various, or even pejorative, historic references used to identify the petitioner should not weigh negatively against Indian identity, but rather be considered as evidence supporting the petitioner's claim of being a "distinct" community.

We agree with the proposal for a phased review. Criterion (e), however, should be reviewed within the context of criterion (a). Phase I should include both of these criteria because they cannot logically be evaluated in isolation.

The evidence necessary to establish tribal existence prior to 1900 should be liberally applied to allow for various historic circumstances. Additionally the year 1900 should not be hard and fast but a general benchmark allowing for tribes to use dates prior to or reasonably close but subsequent to that year to establish their proofs. It should be kept in mind that some tribes were previously identified as uniquely distinct communities, but due to racial tensions of the era and area were only subsequently identified by the term "Indian." It should be clear that this must be reasonably

acknowledged in reviewing evidence provided by petitioner.

For greater transparency, we support the inclusion of a glossary in which all key terms are clearly explained. For example, under the new regulations "historical" means 1900 or earlier. This should be explicit and restated for each criteria to ensure its application. We support the definition of "tribe" being any Indian tribe, band, nation, Pueblo, village or community. The discussion of "tribal rolls" should recognize that the historical situation of many tribes does not include formal rolls during certain periods of history, including the latter 19th and early 20th centuries.

As a community whose request for Federal Recognition was converted to a "Notice of Intent to Petition" in 1978, we support the provision (in 83.7) whereby tribes with petitions under active consideration can choose to be reviewed under the new regulations. However, in establishing review priorities, the OFA should give higher priority order to tribes which have already entered active review status, active waiting status, or submitted a letter of intent, allowing tribes which opt for consideration under the new regulations to maintain their current priority ranking upon submission of a petition under the new regulations.

The regulations would benefit from additional clarity regarding the meaning of "descent" from a historic tribe or tribes, and what manner of evidence is considered sufficient. OFA interpretations of "tribes which combined and functioned as a single autonomous political entity" have been overly stringent. In the past, OFA has interpreted "tribes which combined and functioned as a single autonomous political entity" in ways that led to illogical conclusions. The case of the Houma and related groups is illustrative. In its finding regarding the Houma, OFA concluded that Houma founding ancestors were a group of accidental neighbors who happened to be Indian rather than a group who chose to live with each other because they could live as Indians together. The fact that they and their descendants stayed together and maintained an Indian community identity is certainly evidence of their intention to form a political and cultural community with one another. While most nations would prefer to have had a written Constitution to provide proof of their political community, historical contingencies mean that many communities did not.

Previous OFA interpretations have not accepted documentation that a person or group of people is "Indian" as evidence of descent from a historical tribe or tribes. How can a *community* be Indian and not be descended from a tribe? It is true that federal recognition is rooted in indigenous political primacy (the acknowledgment that Indian nations' governments predated US), but Indian communities all over the US were comprised of individuals from a variety of tribes, people for whom the idea of "tribe" did not always have the same significance as contemporary people imagine (cf. James Merrill on the Catawbas, Richard White on the "little republics" of the *pays d'en haut* and James Harmon on the Puget Sound tribes). The OFA needs to adopt a more flexible interpretation regarding petitioners that formed in historical times through the combination of tribes and tribal fragments. For this reason, it should be clearly and

repeatedly stated within the regulations that evidence should be interpreted within the context of the petitioner's historical circumstances and cultural dynamics.

It should be recognized that the proposed new regulations would define a "tribe" in an inclusive way, as "any Indian tribe, band, nation, pueblo, village or community." Subpart
83.11(e) dealing with descent draws upon this definition in requiring successful petitioners to demonstrate descent from "a tribe that existed in historical time or tribes that combined and functioned in historical times." This subpart should be elaborated as requiring descent from:

> "a tribe that existed in historical times or tribes that combined and functioned as a community or socially associated communities in historical times."

Such elaboration will recognize that, in some instances, communities which were socially associated and co-functioned in some, but not necessarily all, capacities, evolved into more fully combined and co-functioning communities over time due to specific local circumstances such as expediency in dealing with outside entities, population intermarriage, and cultural exchange.

As former head of the BIA Michael Anderson eloquently said, tribal recognition is a federal obligation, not an entitlement program. In the Supreme Court's 1832 decision in *Worcester v. Georgia*, Chief Justice John Marshall wrote that tribal sovereignty is "not only acknowledged, but guaranteed by the United States...." Given this legal and ethical responsibility to guarantee tribal sovereignty, the US government is obligated to investigate whether some Indian nations' sovereignty is currently being violated by non-recognition. The regulations, as they are currently interpreted, passively wait for tribes to conduct the extensive research required to petition for acknowledgment on their own (or worse—actively prevent tribes from attaining acknowledgment).

In the section discussing the Paperwork Reduction Act implications of the proposed changes to the regulations, the Bureau correctly states that the proposed changes will significantly reduce the person-hour burden on petitioners. The Bureau estimates person-hours required for a tribe of 333 citizens at 1,224 per year. It is our community's experience that completing the anthropological, historical, and genealogical work demands significantly more person-hours than this estimate reflects. The economic burden on often-impoverished communities to travel to archives and other necessary research sites is not accounted for at all. Because recognition as a sovereign is a right and a federal obligation, it is ethically and legally necessary for the U.S. to ensure that no community is denied the benefits of those rights and obligations due to a lack of economic resources or the social resources and time necessary to develop academic and technical expertise sufficient to draft an appropriate petition.

The Bureau should prevent such a wrongful denial by providing a grant pool which would become available to petitioners who have successfully passed Phase I review. The grants should include financial resources to be applied at the direction of the petitioning entity as well as ongoing consultation and technical assistance, including assistance from

dedicated historians, anthropologists, and genealogists experienced with the OFA process.

Indigenous groups have survived in many forms, and it is important to nurture them where they persist. It bears repeating that tribes that have not been federally recognized are not always going to look exactly like tribes that have been federally recognized for hundreds of years, for a variety of reasons. We are not better or worse than federally recognized groups, just different. Yet we cherish our indigenous communities, and the federal government is legally and morally obligated to recognize our status as indigenous polities that have survived hundreds of years despite assimilationist pressures.

Sincerely,

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Jason Rivers, Chairman

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Thomas N. Rivers, Vice-Chairman

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Pamela Cartinez, Secretary

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Joanne Sepeda, Treasurer

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Robert Caldwell, Counicl member

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Ione Durr, Councilmember

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Reggie Ezernack, Councilmember